02970049.LOF

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 97-0049**
**Gross Income Tax**
**Calendar Years 1990 -1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

## ISSUE(S)

I. **Gross Income Tax-Management Fees and Failure to File Return**

**Authority:** IC 6-2.1-2-2

Taxpayer protests the gross income tax assessment.

## STATEMENT OF FACTS

Taxpayer, in a letter dated January 7, 1997 protested an audit completed on October 3, 1996. Taxpayer is an out of state taxpayer that purchased an Indiana corporation in December 1989. A Federal Employment number was established for the company and a few of the taxpayer's employees who had been employed prior to the purchase of the Indiana company were put on taxpayer's payroll purely for administrative ease. The appropriate amounts for payroll was charged to the Indiana Company through intercompany charges.

I. **Gross Income Tax-Management Fees and Failure to file return**

## DISCUSSION

At issue is whether the taxpayer is subject to gross income tax.

Upon audit, it was discovered that the taxpayer failed to file Indiana income tax returns. Taxpayer owns several subsidiaries including one in Indiana. The auditor states that the taxpayer sells from inventory stored in its own warehouses, none of which are located in Indiana. Occasionally, rental warehouses in Indiana are used to facilitate a particular shipment to certain customers. This is a rare occurrence, but it did happen twice during the audit period. Further the taxpayer has employees who work at the Indiana plant yet are on the taxpayer's payroll. In addition, the taxpayer has its own Indiana withholding account for its Indiana employees who are higher level salaried.

The employees were employees of the Indiana Corporation and not the taxpayer. Taxpayer further states it did not receive any benefit from these employees working at the Indiana Company. The labor and related taxes from these employees are recorded in the Indiana Company's ledger and were reported on the tax return for the Indiana Company. To try to list them under the taxpayer would be double taxation of the same amounts. The amounts listed as "Management Fees" in the summary of the audit report are not management fees. They are the net amount of the labor and withholding which was passed between the taxpayer and the Indiana Corporation. Taxpayer did not receive any fees for this processing.

Taxpayer protests that it has no nexus in Indiana and the amounts listed as "Management Fees" in the summary of the audit report are not management fees but the net amount of labor and withholding which was passed between the taxpayer and its Indiana company.

I C 6-2.1-2-2 states that: (a) an income tax, known as the gross income tax, is imposed upon the receipt of:
(1) the entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana; and
(2) the taxable gross income derived from activities or businesses or any other source within Indiana by a taxpayer that is not a resident or a domiciliary of Indiana.

As the taxpayer is a non-resident, IC 6-2.1-2-2 imposes gross income tax only on its income derived from activities, etc., within Indiana. Gross income, however has nothing to do with the employ of individuals. Gross income can only come from incomes made through one's business. The only way in which the taxpayer could be taxed under IC 6-2.1-2-2 would be if the taxpayer marked up the payroll to its subsidiary and incurred a profit.

Unless the taxpayer has incurred income from business within Indiana, the Department cannot assess gross income tax. It is possible that the taxpayer has income through the Indiana business but the audit report does not discuss the issue. The employ of four persons who were placed onto the taxpayer's payroll is not relevant to the imposition of gross income tax.

Taxpayer is not required to file gross income tax returns, as it has no nexus in Indiana under the facts presented for the audited tax periods.

## FINDINGS

Taxpayer's protest is sustained.